

SENATE BILL No. 256

DIGEST OF INTRODUCED BILL

Citations Affected: IC 34-6-2-34.5; IC 34-19-4.

Synopsis: Abrogate water as common enemy doctrine. Provides that a person who unreasonably improves the person's land and thereby causes an increased or altered flow of diffused surface water onto the land of another person is liable for the damages caused by the increased flow of water. Permits a person whose land is damaged by the altered flow of diffused surface water to bring an action to abate or enjoin the unreasonable improvement that caused the altered flow of water. Specifies that: (1) this law does not limit the availability of other civil remedies for damages caused by water; and (2) to the extent that this law conflicts with the common enemy doctrine, the common enemy doctrine is abrogated.

Effective: July 1, 2002.

Mrvan

January 7, 2002, read first time and referred to Committee on Corrections, Criminal and Civil Procedures.

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Introduced

Second Regular Session 112th General Assembly (2002)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2001 General Assembly.

SENATE BILL No. 256

A BILL FOR AN ACT to amend the Indiana Code concerning civil law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 34-6-2-34.5 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2002]: **Sec. 34.5. "Diffused surface water," for purposes of**
4 **IC 34-19-4, means water from falling rain or melting snow that is**
5 **diffused over the surface of the land. The term does not include**
6 **water that flows in defined channels.**

7 SECTION 2. IC 34-19-4 IS ADDED TO THE INDIANA CODE AS
8 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
9 1, 2002]:

10 **Chapter 4. Water Nuisances**

11 **Sec. 1. A person who unreasonably improves the person's land**
12 **in such a manner that the improvement causes diffused surface**
13 **water to:**

- 14 (1) **stand in an unusual quantity on another person's land; or**
15 (2) **pass into or over another person's land in a:**
16 **(A) greater quantity than before the improvement; or**
17 **(B) different direction than before the improvement;**

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1 is liable for the damage caused to the other person by the altered
2 flow of diffused surface water.

3 Sec. 2. A person whose land is affected by the altered flow of
4 diffused surface water may bring an action to abate or enjoin the
5 unreasonable improvement under IC 34-19-1.

6 Sec. 3. (a) This chapter does not restrict the availability of any
7 other civil remedy for harm caused by the altered flow of water.

8 (b) To the extent that this chapter is inconsistent with the
9 common enemy doctrine of water diversion, the common enemy
10 doctrine is abrogated.

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